

Benejam



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southern California Engineering Co., Inc.

File: B-238010.2

Date: April 5, 1990

Phillip W. Akwa, for the protester.
Vasio Gianulias, Esq., Office of the General Counsel,
Department of the Navy, for the agency.
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of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protester properly was found nonresponsible where it failed to provide sufficient information to permit finding that individual sureties on its bid bond were acceptable and the record shows the contracting officer's nonresponsibility determination was reasonable.

2. Even though an individual surety may have been accepted by a contracting agency, another agency is not required to accept the surety where it reasonably finds the surety to be unacceptable based on information submitted to it.

DECISION

Southern California Engineering Co., Inc., protests the rejection of its bid under invitation for bids (IFB) No. N62474-88-B-4268, issued by the Department of the Navy for a no break power system at the Pacific Missile Test Center, Point Mugu, California. The Navy rejected Southern's bid because its individual bid bond sureties were found nonresponsible.

We deny the protest.

The IFB required bidders to submit a bid bond in an amount equal to 20 percent of the bid price. In the event the required bid bond named individuals as sureties rather than a corporation, two or more responsible sureties were required to execute the bid bond, and the bidder was

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required to provide a completed standard form (SF) 28, Affidavit of Individual Surety, setting forth financial information for each individual. The SF 28 includes a Certificate of Sufficiency that must be executed by specified bank officers or government officials.

Six bids were received by bid opening on August 17, 1989. Southern submitted the apparent low bid of \$2,826,000. In response to the requirements of the IFB, Southern submitted a bid bond guaranteed by two individual sureties, Virginia Rachal and Forrest E. Watson, whose fully-executed Certificates of Sufficiency accompanied each SF 28.

On her SF 28, Rachal indicated her net worth as \$39,019,800; her primary asset consisted of \$54,295,600 in securities in Amistad, Inc., a closely-held corporation. Watson indicated his net worth as \$17,156,830, and listed \$20,504,594 in an oil and gas lease as his primary asset. Watson also listed \$120,214 in current assets; \$458,333 in corporate stock; \$250,000 for a gemstone collection; \$107,165 in marketable securities; \$255,000 in personal property; \$88,000 in an annuity; and \$647,000 in real estate. Each individual surety's Certificate of Sufficiency was signed by Jerry Leahy, Vice-President of the Metropolitan Security Bank, Ltd. The SF 28s stated that Metropolitan is domiciled in the British West Indies.

Each surety also provided a document identified as an unaudited "Accountant's Review Report," prepared by certified public accountants in Dallas, Texas. The reports noted that "[a]ll information included in this report is the representation of [the surety]," and that the review was "substantially less in scope than an examination in accordance with generally accepted auditing standards." Rachal's report was missing at least one page which was never produced, despite repeated requests from the contracting officer. Attached to Rachal's report was an unaudited balance sheet of Amistad stating that the company is engaged in "the ownership and development to the highest and best use," of an 8,690 acre ranch in Texas. Amistad's balance sheet listed total assets as \$950,100, primarily consisting of land allegedly valued at \$947,000.

Because Southern provided insufficient documentation supporting the value of the assets claimed, and the contracting officer had questions concerning the value of the land and its ownership by Amistad, the contracting officer requested further evidence of the sureties' net worths. By telecopier letter the agency requested acceptable supporting documentation, including (1) a complete description of real property offered, supported by proof of

title, and a certified appraisal or tax assessment; (2) certified balance sheets and income statements with signed opinions for each individual surety; (3) independent certified appraisal of the net value of property offered; (4) a copy of the latest federal and state income tax returns for each surety; and (5) signed balance sheets or income statements with an opinion for each individual surety signed by a certified public accountant. The contracting officer specifically requested Southern to provide evidence of the value of the stocks claimed by the individual sureties.

In response to the contracting officer's request, Southern provided: (1) copies of the sureties' 1988 federal income tax returns, reporting joint incomes with their respective spouses; (2) unexercised, expired, private party agreements to purchase some of the stock held by the sureties; (3) an unsigned letter from the sureties' broker; (4) copies of stock certificates showing ownership of one half of Aquila, Inc., by Rachal; (5) a deed dated 1971 conveying land to Aquila, Inc.; (6) a title opinion dated 1971 concerning this land; (7) receipts for property taxes for Amistad, which presumably reflected the taxable value, not the appraised value, of the land; (8) articles of amendment dated 1975 changing Aquila's name to Amistad; and (9) minutes of a special meeting of the board of directors of Metropolitan, allegedly held at its offices in Caracas, Venezuela, on April 1, 1988, where Jeremiah "Jerry" Leahy was appointed vice president of Metropolitan.

A subsequent investigation revealed that the telephone number listed for Metropolitan had been disconnected and the local telephone directory had no listing for Leahy or Metropolitan. The Texas Department of Banking informed the contracting officer that Metropolitan was not registered to do business in Texas. Accordingly, the contracting officer determined that Leahy was unqualified to sign the certificates of sufficiency and that Metropolitan was an unacceptable financial institution.

As proof of the value of Amistad's land, Southern submitted unidentified, unsigned, hand-written tables which purport to record water elevation, reservoir elevation, and well depth, from various bodies of water with monthly readings from 1968 to 1985, presumably demonstrating the amount of water located under and near Amistad's land. Despite repeated requests by the contracting officer, Southern provided no verifiable evidence of the market value of Amistad stock. Rather, Southern submitted, without any substantive explanation, copies of the Texas Code Annotated, apparently

to substantiate its position that Amistad had legal rights to the underground water.

After reviewing the additional information Southern provided, the contracting officer determined that Southern had provided insufficient and unverifiable evidence of the market value of Amistad's stock, and unsubstantiated proof of the value of the land Amistad listed in its balance sheet as its primary asset. Further, the contracting officer determined that Southern provided no credible evidence that Rachal's ownership interest in Amistad was valued at even \$475,050, or that Rachal owned other assets or securities valued at the \$54,295,600 she claimed on her SF 28. Without further documentation of the value of the claimed assets, the contracting officer concluded that Rachal had an insufficient net worth to cover the penal amount of the bond and, therefore, rejected Southern's bid for lack of an adequate bid guarantee.

Southern challenges the rejection of its bid, contending that its individual sureties showed net worths far in excess of the penal amounts of the bonds; that the Navy failed to adequately investigate the sureties' net worth; that its sureties have been accepted by other government agencies; and that the contracting officer ignored Southern's successful performance on prior government contracts and the cost savings to the government from accepting its bid.

The question of the acceptability of a surety is a factor in determining the responsibility of the bidder and may be established at any time prior to contract award. Labco Constr., Inc., B-232986 et al., Feb. 9, 1989, 89-1 CPD ¶ 135. In reviewing a bidder's responsibility, the contracting officer has broad discretion and absent bad faith or the lack of any reasonable basis for his determination, the contracting officer may decide what specific financial qualifications to consider in determining responsibility. Id. It is the sureties' obligation to provide the contracting officer with sufficient information to clearly establish their responsibility; that is, that they have sufficient financial resources to meet their bond obligations. Hirt Co., B-230864, June 23, 1988, 88-1 CPD ¶ 605.

As a preliminary matter, the issues raised in this protest concerning Rachal, Amistad, Leahy, and Metropolitan are identical to those recently resolved in Southern California Eng'g Co., Inc., B-234515.2, Aug. 21, 1989, 89-2 CPD ¶ 156, which also involved the reasonableness of a contracting officer's rejection of Southern as nonresponsible based on the unacceptability of Rachal as one of its individual

sureties. Here, Southern submitted virtually identical documents in support of Rachal's claimed assets, and relies upon the same arguments considered in the previous decision, in which we found that the agency reasonably determined that the protester failed to provide sufficient information to permit a finding that its individual sureties were acceptable. Since the issues raised in this protest arise from identical factual circumstances, and involve essentially the same parties, we see no basis for reaching a different result here.

As for Watson, Southern's other surety, the contracting officer determined that based on the documents provided the value of the "energy lease" listed as Watson's principal asset could not be determined and was highly speculative. In support of Watson's energy lease, Southern submitted three assignments of oil and gas leases for which Watson paid \$21. Two of the assignments were for only part of the net revenue interest in the lease, and the third lease assignment transferred title without warranty, for \$1. There was no evidence of the current market value of the third lease. The only evidence of the value of the leases was an uncertified feasibility report dated February 1982, indicating that the gross value was only \$2,280,000, not the \$20,504,594 Watson claimed, and cautioned that further study was needed. There was no independent certified appraisal of the current net value of the claimed leases as the contracting officer requested, and no evidence that any oil or gas was currently produced, so the liquidity of the assets in the event of default was questionable.

With regard to the second largest asset listed, real property valued at \$647,000, Watson failed to provide proof of ownership or a certified appraisal of the property as requested. Watson also listed \$458,333 in corporate stock and \$107,165 in "marketable securities." The stock was not publicly traded, however, and Watson provided no evidence of its fair market value. The "securities" were not identified, and Watson provided no evidence of their existence, ownership or market value. Further, Watson provided no credible evidence of the ownership or value of the gemstone collection; failed to provide evidence of the existence, ownership or value of the unidentified "current assets"; and failed to offer proof of the annuity. Consequently, the contracting officer had ample reason to question the accuracy and validity of the representations Watson made on his SF 28.

Once the accuracy of the sureties' representations reasonably has been called into question, the agency is justified in rejecting the sureties, notwithstanding the adequacy of

other assets. Hughes & Hughes, B-235723, Sept. 6, 1989, 89-2 CPD ¶ 218. This reflects the great reliance an agency is entitled to place on the accuracy, thoroughness, and verity of surety financial information provided for government procurements. See Farinha Enters., Inc., 68 Comp. Gen. 666 (1989), 90-1 CPD ¶ ____.


In our view, the contracting officer reasonably determined that unexplained inconsistencies in the supportable values between the assets listed and claimed net worths, and questions regarding the ownership and existence of the assets claimed, called into question the sureties' integrity and the credibility of their representations, thereby diminishing the likelihood that the sureties' financial guarantee would be enforceable. This determination provided a proper basis for rejecting both individual sureties. Id. In this regard, Southern's unsupported assertion that "six contracting officers" have accepted bids guaranteed by Southern's two sureties does not show that the Navy's action in this case was unreasonable, particularly in light of the substantial evidence in the record supporting the contracting officer's determination that the sureties were unacceptable. See Southern California Eng'g Co., Inc., B-234515.2, supra.

With regard to Southern's assertion that the Navy rejected its sureties without adequate investigation, we have held that a contracting officer may rely on the initial and subsequently furnished information regarding net worth submitted by a surety, without further conducting an independent investigation. See KASDT Corp., B-235620, Aug. 21, 1989, 89-2 CPD ¶ 162. Nevertheless, in this case the contracting officer went well beyond the documents submitted in attempting to determine the responsibility of each surety. In addition to examining the unaudited financial reports and balance sheets, the contracting officer requested specific documentary evidence in support of the claimed assets, which Southern failed to produce. Additionally, the contracting officer contacted the Texas Department of Banking to verify the legal status of Metropolitan, and to confirm Leahy's position as an officer qualified to sign the certificates of sufficiency.

Finally, Southern argues that in deciding to reject its bid, the Navy ignored Southern's successful performance on prior contracts and the fact that its bid was \$614,000 less than the next low bid. To be accepted, a bid must include acceptable sureties; once the sureties properly are found unacceptable, the bid must be rejected. See Federal Acquisition Regulation §§ 28.101-4, 28.203(c). Thus,

Southern's prior performance and any potential cost savings provide no basis for accepting Southern's otherwise unacceptable bid.

The protest is denied.


for James F. Hinchman
General Counsel